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AUG 17 2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Matz, *et al.***Attorney Docket:** BS01378**Serial No:** 10/017,630**Art Unit:** 3629**Date Filed:** December 14, 2001**Examiner:** Ouellette, Jonathan**Title:** SYSTEM AND METHOD FOR DEVELOPING TAILORED CONTENT

37 C.F.R. § 1.8 CERTIFICATE OF TRANSMISSION

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Scott P. Zimmerman

Name of Person Transmitting This Paper

August 17, 2007

Date of Transmission

**APPELLANT'S AMENDED BRIEF
IN SUPPORT OF APPEAL**

Mail Stop: Appeal Brief — Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

The Assignee/Appellant hereby submits an amended Brief in Support of Appeal for the above-identified application. A Notice of Non-Compliant Appeal Brief was mailed August 6, 2007. This Notice says the appeal brief should include a status of claim 1-20, which were previously canceled. This amended Brief in Support of Appeal, then, includes a statement that claims 1-20 were previously canceled.

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If any questions arise, the Office is requested to contact the undersigned at (919) 469-2629 or scott@scottzimmerman.com.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Scott P. Zimmerman', with a stylized flourish at the end.

Scott P. Zimmerman
Reg. No. 41,390
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Attorney Docket: 01378
U.S. Application No. 10/017,630 Examiner Ouellette Art Unit 3629
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**APPELLANT'S AMENDED BRIEF
IN SUPPORT OF APPEAL**

REAL PARTY IN INTEREST

BellSouth Intellectual Property Corporation, as assignee of U.S. Patent Application 10/017,630, is the real party in interest.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences pertaining to the above-identified application.

STATUS OF CLAIMS

Claims 1-20 were previously canceled.

Claims 21-25, 27-30, 32-36, 38-44, 48, and 50-53 were finally rejected under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent 6,463,585 to Hendricks *et al.*

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Claims 26, 31, 37, 45-47, and 49 were finally rejected under 35 U.S.C. § 103 (a) as being obvious over *Hendricks* in view of U.S. Patent 6,202,210 to Ludtke *et al.*

The Appellant appeals this final rejection of claims 21-53.

STATUS OF AMENDMENTS

No amendments have been submitted subsequent to the final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

The claimed subject matter generally relates to predicting buttons that are pushed on a remote control. When a user watches television, the user may push buttons on a remote control. Information describing the pushed buttons is stored in a database. Information describing the watched content is also stored in a database. Exemplary embodiments then use this information to predict buttons that will be pushed in the future by the user.

A) Claim 21

In accordance with an exemplary embodiment, claim 21 recites a method for predicting clickstream data, comprising:

- receiving content information from a content database;
- receiving subscriber actions comprising information related to buttons pushed by a subscriber at a remote control while viewing content;
- processing the content information and the subscriber actions; and
- predicting future clickstream data that will describe buttons pushed in the future by the subscriber.

Textual support for claim 21 is also provided. Content information is received from a content database (*see, e.g.*, paragraph [0031] at page 10, lines 13-16; at paragraphs [0032]-[0033], [0036], and [0045]; and at FIGS. 1 and 2). Subscriber actions are received that comprise information related to buttons pushed by a subscriber at a remote control while viewing content (*see, e.g.*, paragraph [0022] at page 7, lines 12-16; and at paragraph [0035], page 12, lines 1-7; *see also* U.S. Application 10/017,742, incorporated by reference and filed December 14, 2001, at paragraph [0019]). The content information and the subscriber actions are processed to predict future clickstream data that will describe buttons pushed in the future by the subscriber (*see, e.g.*, paragraph [0022] at page 7, lines 12-16; *see also* U.S. Application 10/017,742, incorporated by reference and filed December 14, 2001, at paragraph [0023]).

B) Claim 27

In accordance with another exemplary embodiment, claim 27 recites a system for predicting subscriber actions. The server is operative to:

- receive content information from a content database and subscriber actions from a subscriber-action database, the subscriber actions comprising information related to buttons pushed by a subscriber at a remote control while viewing content;
- process the content information and the subscriber actions;
- predict future buttons pushed by the subscriber; and
- create tailored media content that corresponds to the predicted future buttons pushed.

Textual support for claim 27 is provided. Content information is received from a content database (*see, e.g.*, paragraph [0031] at page 10, lines 13-16; at paragraphs [0032]-[0033], [0036], and [0045]; and at FIGS. 1 and 2). Subscriber actions are received that comprise information related to buttons pushed by a subscriber at a remote control while viewing content (*see, e.g.*, paragraph [0022] at page 7, lines 12-16; and at paragraph [0035], page 12, lines 1-7;

see also U.S. Application 10/017,742, incorporated by reference and filed December 14, 2001, at paragraph [0019]). The content information and the subscriber actions are processed to predict future buttons pushed by the subscriber (*see, e.g.*, paragraph [0022] at page 7, lines 12-16; *see also* U.S. Application 10/017,742, incorporated by reference and filed December 14, 2001, at paragraph [0023]). Tailored media content is created that corresponds to the predicted future buttons pushed (*see, e.g.*, paragraph [0040] at page 13, lines 16-17; and at paragraphs [0019], [0024], [0025], [0027], [0028], and [0042]).

C) Claim 32

In accordance with yet another exemplary embodiment, claim 32 recites a computer readable media comprising instructions for:

- analyzing content information from a content database;
- analyzing subscriber actions from a subscriber-action database, the subscriber actions comprising information related to buttons pushed by a subscriber at a remote control while accessing and viewing content; and
- predicting future buttons pushed by the subscriber.

Textual support for claim 32 is provided. Content information from a content database is analyzed (*see, e.g.*, paragraph [0031] at page 10, lines 13-16; *see also* paragraphs [0019], [0030], [0037], [0039], [0042], and [0071]; and at FIG. 6). Subscriber actions from a subscriber-action database are analyzed, the subscriber actions comprising information related to buttons pushed by a subscriber at a remote control while accessing and viewing content (*see, e.g.*, paragraph [0022] at page 7, lines 12-16; and at paragraph [0035], page 12, lines 1-7; *see also* U.S. Application 10/017,742, incorporated by reference and filed December 14, 2001, at paragraph [0019]). Future buttons pushed by the subscriber are predicted (*see, e.g.*, paragraph [0022] at page 7, lines 12-16; *see also* U.S. Application 10/017,742, incorporated by reference and filed December 14, 2001, at paragraph [0023]).

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D) Claim 53

In accordance with yet another exemplary embodiment, claim 53 recites a device, comprising:

a processor communicating with memory, the processor executing software stored in the memory to

receive content information from a content database;

receive subscriber actions comprising information related to buttons pushed by a subscriber at a remote control while viewing content; and

predict future buttons pushed by the subscriber.

Textual support for claim 53 is provided. A processor communicates with memory and executes software stored in the memory (*see* paragraph [0031] at page 10, lines 11-16; *see also* paragraphs [0021]-[0022], [0034], [0036], and [0042]). The software receives content information from a content database (*see, e.g.,* paragraph [0031] at page 10, lines 13-16; *see also* paragraphs [0019], [0030], [0037], [0039], [0042], and [0071]; and at FIG. 6). Subscriber actions are received that comprise information related to buttons pushed by a subscriber at a remote control while viewing content (*see, e.g.,* paragraph [0022] at page 7, lines 12-16; and at paragraph [0035], page 12, lines 1-7; *see also* U.S. Application 10/017,742, incorporated by reference and filed December 14, 2001, at paragraph [0019]). Future buttons pushed by the subscriber are predicted (*see, e.g.,* paragraph [0022] at page 7, lines 12-16; *see also* U.S. Application 10/017,742, incorporated by reference and filed December 14, 2001, at paragraph [0023]).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The Appellant appeals the final rejection of claims 21-25, 27-30, 32-36, 38-44, 48, and 50-53 under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent 6,463,585 to Hendricks *et al.*

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The Appellant also appeals the final rejection of claims 26, 31, 37, 45-47, and 49 under 35 U.S.C. § 103 (a) as being obvious over *Hendricks* in view of U.S. Patent 6,202,210 to Ludtke *et al.*

ARGUMENT

1. *Hendricks* Does Not Teach Every Claimed Feature of the Claims, so the § 102 (e) Rejection is Improper

Hendricks cannot anticipate claims 21-25, 27-30, 32-36, 38-44, 48, and 50-53. Independent claims 21, 27, 32, and 53 recite features that are not disclosed by *Hendricks*. Independent claim 21, for example, recites "*predicting future clickstream data that will describe buttons pushed in the future by the subscriber.*" Independent claims 27, 32, and 53 similarly recite "*predicting future buttons pushed by the subscriber.*"

Hendricks cannot anticipate such features. *Hendricks* is entirely silent to any prediction of future buttons pushed on the remote control. As the below paragraphs explain, *Hendricks* admittedly gathers click stream information to predict what content on a channel will most satisfy a viewer. Examiner Ouellette argues that this prediction is equivalent to "*predicting future clickstream data that will describe buttons pushed in the future by the subscriber*" or to "*predicting future buttons pushed by the subscriber,*" as recited in the independent claims. See, e.g., Examiner Ouellette, Final Office Action mailed April 3, 2007, at page 3, lines 5-8.

The Appellant must, very respectfully, disagree with Examiner Ouellette. Even if *Hendricks* uses click stream information to predict what content will most satisfy the viewer, this usage is in no way equivalent to "*predicting future clickstream data*" or to "*predicting future buttons pushed by the subscriber,*" as recited in the independent claims. Using click stream data to predict content is not equivalent to predicting future buttons pushed on a remote control (or predicting future clickstream data). The Assignee cannot agree with Examiner Ouellette's conclusion, and hence this appeal.

Hendricks cannot anticipate such features. *Hendricks* makes no disclosure of “predicting future clickstream data that will describe buttons pushed in the future by the subscriber” or of “predicting future buttons pushed by the subscriber,” as recited in the independent claims. As the Assignee has previously acknowledged, *Hendricks* receives “programs watched information” to “develop a program line-up.” U.S. Patent 6,463,585 to *Hendricks et al.* (Oct. 8, 2002) at column 11, lines 42-44 and 51-54. *Hendricks* also mentions a remote control and “clickstream data.” *Id.* at column 10, lines 38-60 and at column 20, lines 26-27. As *Hendricks* explains, this data is used to develop a “switching plan” for different “feeder channels” that carry advertising and programming. *See id.* at column 6, lines 1-13. When a programming break occurs, the terminal is switched amongst the feeder channels, based upon viewing habits and demographics. *See id.* at column 6, lines 24-42. As *Hendricks* explains, “[c]areful management of the feeder channels, including their dynamic switching, and control of the advertising airing on the feeder channels at any given time can greatly increase the both the advertiser’s likelihood of reaching an interested viewer, as well as the likelihood a viewer is interested in a specific advertisement.” *See id.* at column 4, lines 43-48.

Moreover, *Hendricks* makes no mention of predicting “future clickstream data.” As the Appellant has also previously acknowledged, *Hendricks* mentions how “clickstream data” may be used to calculate program viewership, targeted viewer groupings, peak viewing times, buy rates, and advertising rates. *See* U.S. Patent 6,463,585 to *Hendricks et al.* (Oct. 8, 2002) at column 20, lines 19-35. No where, however, does *Hendricks* disclose or suggest that clickstream data is used to predict future clickstream data (or buttons pushed). *Hendricks*, then, cannot be reasonably interpreted to “[predict] future clickstream data that will describe buttons pushed in the future by the subscriber” or to “[predict] future buttons pushed by the subscriber,” as recited in the independent claims.

Hendricks, then, cannot anticipate the pending claims. If the Office must interpret *Hendricks* to make some prediction, the only reasonable interpretation is that *Hendricks* predicts what “feeder channel” will most satisfy a viewer. *Hendricks* cannot be reasonably interpreted to

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"[predict] future clickstream data that will describe buttons pushed in the future by the subscriber" or to "[predict] future buttons pushed by the subscriber," as recited in the independent claims.

So, *Hendricks* cannot anticipate the pending claims. *Hendricks* fails to disclose "predicting future clickstream data that will describe buttons pushed in the future by the subscriber," as recited in independent claim 21. *Hendricks* also fails to disclose "predicting future buttons pushed by the subscriber," as recited in independent claims 27, 32, and 53. The independent claims, and their respective dependent claims, cannot be anticipated by U.S. Patent 6,463,585 to *Hendricks et al.* The Board is thus respectfully requested to remove the § 102 (e) rejection of claims 21-25, 27-30, 32-36, 38-44, 48, and 50-53.

2. *Hendricks* and *Ludtke* Do Not Teach Every Claimed Feature of the Claims, so the § 103 (a) Rejection is Improper

The Office also finally rejected claims 26, 31, 37, 45-47, and 49 under 35 U.S.C. § 103 (a) as being obvious over *Hendricks* in view of U.S. Patent 6,202,210 to *Ludtke et al.* These claims, however, cannot be obvious in view of *Hendricks* and *Ludtke*. These claims are all dependent upon their respective base claim and, thus, incorporate the same distinguishing features. No where, for example, does the combined teaching of *Hendricks* and *Ludtke* teach or suggest "predicting future clickstream data that will describe buttons pushed in the future by the subscriber," as recited in independent claim 21. The combined teaching of *Hendricks* and *Ludtke* also fails to disclose "predicting future buttons pushed by the subscriber," as recited in independent claims 27, 32, and 53. One of ordinary skill in the art, then, would not find it obvious to modify the teachings of *Hendricks* and *Ludtke* to obviate claims 26, 31, 37, 45-47, and 49. Because the proposed combination of *Hendricks* and *Ludtke* does not teach or suggest all the claimed features, the Board is respectfully requested to remove the § 103 rejection of these claims.

CONCLUSION

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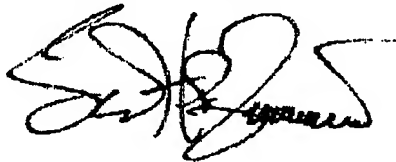
In view of the foregoing reasons, the Appellant respectfully requests removal of the § 102 (e) of claims 21-25, 27-30, 32-36, 38-44, 48, and 50-53. The Appellant also respectfully requests removal of the § 103 (a) rejections of claims 26, 31, 37, 45-47, and 49.

AUTHORIZATION FOR PAYMENT OF FEES

If there are any other fees due in connection with the filing of this brief in support of appeal, please charge the fees to the credit card identified in the Credit Card Payment Form previously submitted with the original brief. If any additional fees are required, such as a fee for an extension of time under 37 C.F.R. § 1.136, such extension of time is requested and the fee should also be charged to the credit card on file.

If any issues remain outstanding, the Office is requested to contact the undersigned at (919) 469-2629 or scott@scottzimmerman.com.

Respectfully submitted,



Scott P. Zimmerman
Attorney for the Assignee/Appellant
Reg. No. 41,390

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CLAIMS APPENDIX

U.S. Patent Application No. 10/017,630 Pending Claims

- 1.-20. (Canceled)
21. A processor-implemented method for predicting clickstream data, comprising:
- receiving content information from a content database;
 - receiving subscriber actions comprising information related to buttons pushed by a subscriber at a remote control while viewing content;
 - processing the content information and the subscriber actions; and
 - predicting future clickstream data that will describe buttons pushed in the future by the subscriber.
22. A method according to claim 21, further comprising merging the content information received from the content database and the information related to buttons pushed by the subscriber to create subscriber choice information.
23. A method according to claim 21, further comprising correlating the content information received from the content database with the information related to buttons pushed by the subscriber.
24. A method according to claim 21, further comprising categorizing the content information received from the content database.
25. A method according to claim 21, wherein the step of processing the content information comprises at least one of i) analyzing the buttons pushed during preceding content and ii) analyzing the buttons pushed during succeeding content.

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26. A method according to claim 21, wherein the step of receiving the subscriber actions comprises receiving buttons pushed by the subscriber to receive an alternate source of content.
27. A server for predicting subscriber actions, the server operative to:
- receive content information from a content database and subscriber actions from a subscriber-action database, the subscriber actions comprising information related to buttons pushed by a subscriber at a remote control while viewing content;
 - process the content information and the subscriber actions;
 - predict future buttons pushed by the subscriber; and
 - create tailored media content that corresponds to the predicted future buttons pushed.
28. The server according to claim 27, further operative to correlate the content information with the information related to buttons pushed by the subscriber.
29. The server according to claim 27, further operative to categorize the content information.
30. The server according to claim 27, further operative to at least one of i) analyze buttons pushed during preceding content and ii) analyze buttons pushed during succeeding content.
31. The server according to claim 27, further operative to analyze buttons pushed by the subscriber to receive an alternate source of content.
32. A computer readable media comprising instructions for:
- analyzing content information from a content database;

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analyzing subscriber actions from a subscriber-action database, the subscriber actions comprising information related to buttons pushed by a subscriber at a remote control while accessing and viewing content; and
predicting future buttons pushed by the subscriber.

33. A computer program product according to claim 32, further comprising instructions for merging the content information and the information related to buttons pushed by the subscriber to create subscriber choice information.
34. A computer program product according to claim 32, further comprising instructions for correlating the content information with the information related to buttons pushed by the subscriber.
35. A computer program product according to claim 32, further comprising instructions for categorizing the content information.
36. A computer program product according to claim 32, further comprising instructions for at least one of i) analyzing buttons pushed during preceding content and ii) analyzing buttons pushed during succeeding content.
37. A computer program product according to claim 32, further comprising instructions for analyzing buttons pushed by the subscriber to receive an alternate source of content.
38. A method according to claim 21, further comprising creating tailored media content that corresponds to the predicted future clickstream data.
39. A method according to claim 38, wherein the tailored media content comprises content bundled with an advertisement for a product or service.

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40. A method according to claim 38, further comprising distributing the tailored media content to the subscriber.
41. A method according to claim 38, further comprising tracking popularity of the tailored media content for a period of time.
42. A method according to claim 21, further comprising creating tailored media content that corresponds to past subscriber actions.
43. A method according to claim 21, further comprising creating tailored media content that corresponds to a demographic of the subscriber.
44. A method according to claim 21, further comprising creating tailored media content that corresponds to a purchasing history of the subscriber.
45. A method according to claim 21, further comprising receiving information related to an alternate video source received by the subscriber.
46. A method according to claim 21, further comprising presenting types of content available to the subscriber during a period of time, with the types of content comprising an alternate video source.
47. A method according to claim 46, wherein presenting the types of content available comprises integrating content available from the alternate video source into an electronic programming guide.
48. A method according to claim 21, further comprising providing the subscriber a log of received content.

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49. A method according to claim 21, further comprising merging the content information and information related to an alternate video source to determine what content is received by the subscriber.
50. A method according to claim 21, wherein the content information comprises an amount of time that an advertisement was received.
51. A method according to claim 21, further comprising analyzing the subscriber actions to determine when the subscriber initially receives an entire advertisement but subsequently only receives a portion of the advertisement.
52. A computer program product according to claim 32, further comprising instructions for accessing the subscriber actions taken by the subscriber while accessing and viewing content.
53. A device, comprising:
- a processor communicating with memory, the processor executing software stored in the memory to
 - receive content information from a content database;
 - receive subscriber actions comprising information related to buttons pushed by a subscriber at a remote control while viewing content; and
 - predict future buttons pushed by the subscriber.

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EVIDENCE APPENDIX

There are no submissions pursuant to 37 CFR § 41.37 (c) (ix) for U.S. Patent Application No. 10/017,630.

RELATED PROCEEDINGS APPENDIX

There are no submissions pursuant to 37 CFR § 41.37 (c) (x) for U.S. Patent Application No. 10/017,630.